

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

RECEIVED

NOV 10 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 309(j)
of the Communications Act
Competitive Bidding

PP Docket No. 93-253

COMMENTS OF ANCHORAGE TELEPHONE UTILITY

The Municipality of Anchorage d/b/a Anchorage Telephone Utility ("ATU") respectfully submits these Comments in response to the Notice of Proposed Rule Making ("Notice") released October 12, 1993, in the above-captioned proceeding. The Commission has requested comment on how to implement competitive bidding authorized by Section 309(j) of the Communications Act, as amended by the Omnibus Budget Reconciliation Act of 1993 ("Budget Act").

The Commission has specifically requested comment on the definition of the term "rural telephone companies" as it is used in amended Section 309(j)(4)(D). This section directs the Commission to ensure that, inter alia, "rural telephone companies" "are given the opportunity to participate in the provision of spectrum-based services[.]"

No. of Copies rec'd
List ABCDE

079

The Commission has proposed that the phrase "rural telephone companies" be defined to include those carriers that are eligible for the exemption from telephone company-cable television cross-ownership restrictions under Section 63.58 of the Commission's Rules. This proposal, however, is not consistent with the legislative history or the statutory amendment. The legislative history confirms that "rural telephone companies" should be defined to include municipally-owned telephone companies that are exempt from Federal income tax.^{1/}

The statutory provision recognizing that special consideration should be given to rural telephone companies originated in the Senate budget bill, S. 1134. The Senate found that competitive bidding should be structured to address the legitimate needs of rural telephone companies in providing spectrum-based, common carrier services in the markets in which they provide local exchange service. S. 1134, 103d Cong. 1st Sess. § 402(10) (1993). The Senate bill met this requirement by directing the Commission to provide "rural program licenses" to "qualified common carriers." The Senate defined "qualified common carrier" as a common carrier that "either provides telephone exchange service by wire in a rural area, provides telephone exchange service by wire to less than

^{1/} ATU intends to file for reconsideration in the Commission's PCS rulemaking proceeding, GN 90-314, urging that cellular interests of rural telephone companies should not be considered in evaluating their eligibility for PCS licenses.

10,00 subscribers, or is a telephone utility whose income accrues to a State or political subdivision thereof." Id. § 408(b) (emphasis added).

The Budget Act incorporated the Senate's requirement that the competitive bidding process provide an opportunity for these telephone companies to obtain spectrum.^{2/} Though the Budget Act altered the language used by the Senate, it did not alter the intent. Indeed, the Conference Report expressly states that the Senate's findings are incorporated by reference in the Budget Act.^{3/} Accordingly, in interpreting the phrase "rural telephone companies," the proper reference is to the Senate bill. As the Senate stated in the committee print accompanying its budget bill, "rural" is defined as "non-urbanized areas containing no incorporated place with more than 10,00 inhabitants or areas served by small (10,00 or fewer access lines) or municipal carriers."^{4/}

Including municipally owned telephone companies within the definition of "rural" fully comports with the policy of special consideration to rural telephone companies. Congress recognized the importance of opportunities for local

^{2/} The House budget bill did not contain a provision ensuring that rural telephone companies be provided spectrum in competitive bidding procedures.

^{3/} H.R. Conf. Rep. No. 213, 103d Cong, 1st Sess. 481 (1993).

^{4/} Senate Comm. on Finance, 103d Cong, 1st Sess., Reconciliation Submissions of the Instructed Committees Pursuant to the Concurrent Resolution on the Budget (H. Con. Res. 64) 70 (Comm. Print 1993) (emphasis added).

exchange carriers to provide spectrum-based services within their service areas and that certain telephone companies would have difficulty obtaining spectrum under pure competitive bidding procedures. The Senate recognized that municipally-owned local exchange carriers -- like their counterparts serving rural areas -- do not have the same capital resources to bid for spectrum as do privately-owned carriers.

The focus for ATU -- and most municipal carriers -- is to keep rates low, not on paying dividends to the Municipality. According to the Commission's recent report on Trends in Telephone Service, the average residential rate for 1992 is \$13.08. As of January 1, 1994, ATU's residential rate will be \$9.70. ATU is unable to accumulate the capital necessary to compete with for-profit entities for spectrum licenses. Absent the special provisions passed by the Senate and contemplated by the entire Congress, ATU and other municipal telephone companies may well be shut out of spectrum auctioning.^{5/}

* * *

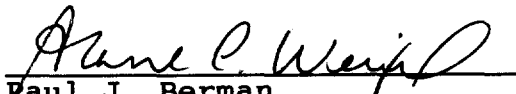
Congress found that the public interest will be best served by establishing a competitive bidding procedure in which all telephone companies would have an opportunity to provide spectrum-based services in their service areas.

^{5/} There are only about a dozen state- or municipally owned telephone companies in the United States. Thus, including such companies within the definition of "rural telephone companies" will not substantially impact the revenues expected from spectrum auctioning.

Accordingly, Congress has directed the Commission to make special provisions for "rural telephone companies." The Senate did not create separate categories for rural and municipal telephone companies, but rather included them all as qualified rural carriers because the needs and interests are the same. The phrase "rural telephone companies" should be defined in the Commission's rules as the Senate defined it -- to include municipally-owned telephone companies.

Respectfully submitted,

THE MUNICIPALITY OF ANCHORAGE
d/b/a ANCHORAGE TELEPHONE
UTILITY

By 
Paul J. Berman
Alane C. Weixel

Covington & Burling
1201 Pennsylvania, Ave., N.W.
P.O. Box 7566
Washington, D.C. 20044
(202) 662-6000

Its Attorneys

November 10, 1993